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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION
HONORABLE ANDRE BIROTTE, JR., U.S. DISTRICT JUDGE

UM CORPORATION,
Plaintiff,

vs. Case No. 15-3764-AB
TSUBURAYA PRODUCTIONS, COMPANY, LTD.,
Defendants.

_____ /

REPORTER'S TRANSCRIPT OF
MOTION ON ATTORNEY'S FEES
FRIDAY, JULY 20, 2018
10:00 A.M.
LOS ANGELES, CALIFORNIA

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1 **LOS ANGELES, CALIFORNIA; FRIDAY, JULY 20, 2018**

2 **10:00 A.M.**

3 **--oOo--**

10:45AM

4
5 THE COURTROOM DEPUTY: Calling civil case matter,
6 *CV 15-3764, UM Corporation versus Tsuburaya Productions*
7 *Company, Ltd.*

8 Counsel, step forward and state your appearances.

10:45AM

9 MR. CHIBIB: Good morning, Your Honor. Michael
10 Chibib appearing on behalf of UMC.

11 THE COURT: Obviously, you didn't bring back any
12 goodies from Austin. I am very disappointed, but that is okay.

13 MR. WEXLER: Jeffrey Wexler, same party.

10:45AM

14 MR. POSNER: Good morning, Your Honor. Daniel
15 Posner from Quinn Emmanuel for defendant, Tsuburaya
16 Productions.

17 THE COURT: Tell Mr. Quinn that I'm disappointed he
18 doesn't grace us with his presence today.

10:45AM

19 MR. POSNER: Unfortunately, he had an urgent matter.
20 I will try to stand in his shoes today.

21 THE COURT: Well, it's nice to see all of you.

22 So we are here bringing back lovely memories of the trial
23 on the motion of attorney's fees. I have issued a tentative on
24 this motion.

10:46AM

25 Have the parties had an opportunity to review the

1 tentative? We will start with Mr. Posner.

2 MR. POSNER: Yes, Your Honor.

3 THE COURT: Mr. Wexler and Mr. Chibib?

4 MR. CHIBIB: Yes, Your Honor, we have seen it.

10:46AM 5 THE COURT: So I assume, Mr. Chibib, and I could be
6 wrong, you take some issue with the tentative?

7 MR. CHIBIB: Yes, Your Honor.

8 THE COURT: I will allow you to be heard.

9 MR. CHIBIB: So first, Your Honor, just some
10:46AM 10 questions and some confusion around the tentative.

11 It says that the order is granted, in part, and the fees
12 awarded were in total.

13 I'm not sure if there was a delineation among the parties
14 specifically to counter-defendants Golden Media Group and TIGA
10:46AM 15 or if any fees were attributed to work on those counter-claims
16 or on those claims?

17 THE COURT: I thought it was more with respect to
18 that differential that we made in Footnote 2 about the
19 4,280,000 versus the 4,107,000.

10:47AM 20 So I think that was the distinction I was trying to draw.

21 MR. CHIBIB: Okay. So my first question, Your
22 Honor, then would be I don't believe there is a discussion of
23 the applicability of fees against those two counter-defendants.

24 Remember, they were not a part of the complaint and were
10:47AM 25 solely counter-defendants to claims brought by Tsuburaya after

1 the registration of their copyrights.

2 So, our position is they had no claim in this case. They
3 didn't bring any action under the copyright laws, so how could
4 fees be assessed against those parties, in particular?

10:47AM

5 THE COURT: Okay.

6 MR. CHIBIB: Secondly, Your Honor, I mean, we take
7 issue with much of this, unfortunately.

10:48AM

8 Specifically, though, there is some confusion in the
9 discussion regarding the finding of fees, and specifically as
10 it relates to two of the factors, one is frivolity, and the
11 other is objectionably reasonable claims.

10:48AM

12 The Court made no specific findings of frivolity or
13 objective unreasonableness. There certainly is some soft
14 language around it, but then concluded that both of those
15 factors weighed in favor of granting fees.

10:48AM

16 I feel like that is inconsistent. I feel like
17 specifically with respect to frivolity, you know, the only
18 claim on frivolity that Tsuburaya made specifically was in our
19 offensive summary judgment, which we filed in good faith and,
20 you know, reasonableness in the sense that we had no idea about
21 these Thai judgments.

22 We filed it specifically, and only on the Japanese and
23 Chinese judgments, both of which went our way, right?

10:49AM

24 So we weren't asking the Court to find the Japanese and
25 Chinese courts were better than the Thai courts. We didn't

1 know about the Thai judgments.

2 In our brief, we briefly mentioned this, but the reason we
3 didn't know about those judgments, is one, our client didn't
4 tell us; we had no idea.

10:49AM

5 And opposing counsel, during the meet and confer process,
6 knew about those judgments during the meet and confer process
7 and yet never raised that issue to us, nor did they produce
8 those documents in response to outstanding discovery requests
9 that were already there.

10:49AM

10 So, there is nothing frivolous about us filing a motion
11 regarding two foreign judgments that were in concert and not
12 having any idea about the others.

13 THE COURT: Well, Mr. Chibib, I appreciate your
14 comments and questions, but I mean, at the end of the day, I
15 mean, the crux of this is not about whether this is frivolous
16 or not, it is whether or not this is part and parcel of this
17 copyright claim. I mean, that is really the issue.

10:49AM

18 MR. CHIBIB: Well, Your Honor, we also take issue
19 with the tentative in the sense there is no delineation made
20 prior, you know, from the standpoint of when Your Honor granted
21 the summary judgment on September 11th of 2017, right?

10:50AM

22 After that point in time, there is no copyright claim.
23 There is no claim whatsoever.

24 There is no findings of anything being frivolous or
25 unreasonable after the granting of summary judgment.

10:50AM

1 THE COURT: I guess, my view, is at least the
2 Court's view, and I know you disagree, that this all relates
3 back to the one agreement.

4 So, but again, I think -- I guess, the reason why I say
10:50AM 5 that is it seems to me that is the issue.

6 The frivolity and all of that, it is whether this relates
7 back to this agreement, I think, is the real heart of the
8 matter here.

9 MR. CHIBIB: Well, I don't disagree with that. I
10:50AM 10 think that -- remember, their entry into collecting fees is
11 under the Copyright Act. They are using Section 505 of the
12 Copyright Act to get fees.

13 After summary judgment, there is no copyright claim in the
14 case.

10:51AM 15 There are claims regarding contracts. There is claims
16 that we have relating to -- declaratory judgment claims we have
17 relating to the contract, the license, saying hey, we're the
18 exclusive licensee under this contract.

19 Their copyright claims -- remember, their copyright claims
10:51AM 20 fall out under 412, because they were well after the original
21 published date, and they hadn't registered those copyrights
22 prior to the infringement, which happened in 2012.

23 THE COURT: Right, I get that. But, I guess, well,
24 do you disagree, because at least the research seems to suggest
10:51AM 25 that you can give these fees under the Copyright Act if they

1 are related.

2 And, I guess, I would like to hear from you as to why you
3 think they are not related.

4 MR. CHIBIB: Yes, Your Honor. And I agree, that the
10:51AM 5 *InvesSys* case, I believe, stands for the proposition you can
6 grant fees that are of like claims.

7 However, you know, the point we are making is that there
8 are some distinctions we can draw.

9 There is definitely some legal distinctions that we would
10:52AM 10 actually request some further briefing on the 412 issue, and
11 whether or not these are like claims.

12 But, so, specifically, the distinctions that we have
13 relating to the cases that were cited by TPC as it relates to
14 like claims are noted, in the *InvesSys* case, they had a pending
10:52AM 15 copyright infringement claim. The *InvesSys* case, the trial was
16 on ownership alone, but there was still a pending copyright
17 claim because they had bifurcated the trials. So there was
18 still this pending claim.

19 In this case, there is no longer a copyright claim.

10:52AM 20 In the *20th Century Fox* claim they had all sorts of other
21 pending claims that were inextricably intertwined with the
22 copyright claim.

23 THE COURT: You don't think that is the case here?

24 MR. CHIBIB: I don't think so at all. We're talking
10:53AM 25 about the authenticity of the document, which that has nothing

1 to do with the copyright.

2 We were talking about whether or not we're the licensee.

3 Again, you know, the contract specifically is titled,
4 license agreement, license granting agreement, and identifies
10:53AM 5 us -- I don't think that is related to the copyright at all.

6 And so the other part about this 412 issue, Your Honor, is
7 if we think about their claim for declaratory relief that they
8 own the copyrights, that's -- they can't use that to bootstrap
9 their claim for fees and do away with Section 412, right?

10:53AM 10 Section 412 says in no uncertain terms, if you didn't
11 register your copyright before the infringement, and if it's
12 after three months after the publication of the original works,
13 you cannot get fees.

14 If a plaintiff -- or a defendant, I'm sorry, can bootstrap
10:54AM 15 a declaratory relief claim for ownership and somehow manages to
16 get fees out of that undoing Section 412, that totally does
17 away with the intent of Section 412.

18 So, they have a declaratory relief claim for ownership
19 only. That doesn't get it done because of Section 412.

10:54AM 20 THE COURT: If I could interject for a moment. I
21 thought the fees were not based on the copyright claim, they
22 were based on the declaratory relief action that was related to
23 the original counterclaim.

24 MR. CHIBIB: Well, I think that is their position,
10:54AM 25 Your Honor. I think that is why there is a delineation after

1 the summary judgment grant.

2 I think one could argue, and TPC has argued that the
3 copyright claim that was pending prior to summary judgment
4 and/or the declaratory relief claim provides the basis under
10:55AM 5 505 for them to get fees.

6 We disagree for all of the reasons that we have briefed.

7 However, after that fact, there is no more copyright
8 claim. There is nothing to be inextricably intertwined. There
9 is no basis for continued fees after that fact.

10:55AM 10 THE COURT: Okay. All right.

11 Go ahead, I will let you continue with the argument.

12 MR. CHIBIB: Thank you, Your Honor. I know this is
13 scatter shot, I will try to address the tentatives.

14 THE COURT: That's fine.

10:55AM 15 MR. CHIBIB: Going back to the frivolity and the
16 reasonableness, I do want to make a point that our position is
17 in no way that, because we think Your Honor made mistakes in
18 the ruling that somehow our position was reasonable.

19 Our position is that we have reasonable positions in
10:55AM 20 filing our motions and in proposing our arguments to Your Honor
21 irrespective of what the outcome was.

22 We think they were reasonable as presented.

23 Specifically, the scope of the right seems to be the one
24 issue that you have identified in your tentative that gives you
10:56AM 25 pause.

1 And, you know, remember, when we filed this lawsuit, we
2 had the Japanese Court and the Chinese Court ruling in our
3 favor as to the authenticity of the document and as to it being
4 a license.

10:56AM 5 We also had the 1996 apology letter, which confirmed all
6 of those rights, confirmed the authenticity of that document.

7 So we weren't going in this, you know, throwing stuff
8 against the wall and filing claims that had no merit.

9 The scope of the rights, our argument, which it wasn't
10:56AM 10 specifically addressed in the tentative, is twofold.

11 One, is that there would not be preclusive effect of the
12 Japanese judgments here in the United States, for the reasons
13 again, Your Honor, we briefed it extensively.

14 THE COURT: Right.

10:56AM 15 MR. CHIBIB: But also, that the Berne Convention --
16 the Berne Convention provides that while ownership may be
17 determined in the home country of the copyright, the scope of
18 the rights granted to an exclusive licensee is determined in
19 the country where we're trying to establish the rights here in
10:57AM 20 the United States.

21 Our position -- I mean, it's still our position, and it
22 will be our position on appeal is that that was perfectly
23 acceptable and certainly reasonable to say, okay, ownership is
24 determined in Japan, but the scope of the rights granted under
10:57AM 25 that license are determined per the Berne Convention under U.S.

1 law.

2 We had arguments -- it's not like we're just saying the
3 scope of these rights, it just should give us everything.

4 In the document itself, Exhibit 4A, the 1976 agreement, it
10:57AM 5 granted the copyright. I mean, that word was specifically
6 used.

7 So again, I understand, you know, we're dealing with
8 hindsight now, and I understand that, you know, TPC prevailed
9 on pretty much every claim.

10:57AM 10 But our positions were reasonable at the time, and
11 certainly not frivolous.

12 You also mentioned, one of the most important factors, is
13 the purpose of the Copyright Act, whether or not the award of
14 fees promotes the purpose of the Copyright Act.

10:58AM 15 We have evidence in this case, in this motion that we
16 filed in our opposition, that TPC specifically admitted Kei
17 Minamitani, in his declaration, said this lawsuit didn't stop
18 them from creating new works, didn't stop them from
19 distributing new works, not just in Japan -- in Japan, but
10:58AM 20 outside of the United States.

21 So I don't see how an award of fees here, when we know --
22 it's not as if it's speculative, they specifically told us that
23 this lawsuit had no effect on them creating new works.

24 So I think that is an important note for Your Honor in --
10:58AM 25 if you are going to look back at this tentative.

1 THE COURT: And, I will.

2 MR. CHIBIB: Okay. That is really it.

3 So, Your Honor, we would love an opportunity to continue
4 briefing as to the 412, 505 interplay under the Copyright Act,
10:59AM 5 whether or not their claims are barred. They are not allowed
6 to collect fees because they didn't register in time.

7 We would also like Your Honor to consider specifically the
8 delineation in time as to the motion for summary judgment
9 grant.

10:59AM 10 THE COURT: All right. Thank you, Mr. Chibib. Let
11 me hear from Mr. Posner.

12 MR. CHIBIB: Sorry, and also the parties, the GMG
13 and TIGA issue as to the other defendants.

14 THE COURT: All right.

10:59AM 15 MR. POSNER: Thank you, Your Honor.

16 I didn't hear much in Mr. Chibib's argument that
17 wasn't actually addressed in the tentative, in my
18 understanding.

19 I will take off some points and will be happy to answer
10:59AM 20 any questions Your Honor has.

21 I would start with what the Courts have recognized as the
22 most important factor here, which is whether an award of fees
23 satisfies or promotes the fundamental purpose of the Copyright
24 Act.

10:59AM 25 I would just add that one would be hard pressed to come up

1 with a case where that factor actually is met more than it is
2 here. This is not just an example of a plaintiff, creative
3 copyright owner, trying to stop someone from infringing.

4 These were our client's creative works for 50 years. It's
11:00AM 5 lifeblood that another party was effectively trying to stop us
6 from being able to distribute, and they sued us in a way that
7 required us to defend our rights here in order to maintain that
8 right to distribute our works, the incentive to continue to get
9 those works out to the public.

11:00AM 10 That is what was accomplished by the case, which is really
11 the primary reason why the fees are appropriate here.

12 We use the word glib in our papers. I think it might be
13 something stronger than that to suggest that the assertion of
14 rights that UMC made in this case had no impact on our ability
11:00AM 15 to distribute or create works in the United States because that
16 plainly isn't true.

17 THE COURT: What about Mr. Chibib's comment that TPC
18 admitted it had no effect on the things on the U.S.?

19 MR. POSNER: I don't think that actually happened.
11:00AM 20 I would like to see the record reference to that.

21 I think what they referred to in the papers that we had
22 rights to Japan, there is no dispute about that. However,
23 Japan is not the world, and I can frankly come up with some
24 specific examples. I'm not sure if I'm at liberty to say how
11:01AM 25 this dispute about the rights basically prevented both parties

1 from making and distributing Ultraman works. So, that is the
2 result of this case.

3 THE COURT: What is your response, Mr. Chibib, I
4 think, in essence is saying, these are different legal
11:01AM 5 theories, different set of operative facts, so that claims are
6 not related.

7 What it is your response?

8 MR. POSNER: Well, that is not correct. I mean, one
9 thing I would say, so our right to fees comes under
11:01AM 10 Section 405, which says, when you prevail in a case under the
11 Copyright Act, you are eligible for fees.

12 There is law, we cited it, Your Honor cited it, the
13 InvesSys case and others, this is, quote, literally a copyright
14 case because it started with a claim for copyright
11:01AM 15 infringement.

16 That is the claim that carried through -- through summary
17 judgment.

18 There were other copyright claims and other declaratory
19 relief claims and counterclaims asserted by both parties.

11:02AM 20 The law is very clear. Mr. Chibib is asking an
21 opportunity for further briefing.

22 They have had several weeks now since they have seen our
23 positions and reply. I'm not sure they have anything to come
24 up with today.

11:02AM 25 We have researched this pretty thoroughly, and the law

1 seems clear that claims of ownership -- and this is intuitive
2 -- they are necessarily prerequisites to copyright claims.

3 And that is what we had here. There were infringement
4 claims and there were ownership claims.

11:02AM 5 These other cases that we have looked at, they recognize
6 that declaratory relief claims and counterclaims, including
7 the -- I call it the Bob Marley case, but I know it has a
8 different name, that case -- the state law claims for breach of
9 contract, or, you know, it doesn't really matter the form of
11:02AM 10 the claim.

11 The purpose is that if it's relating to the issue of
12 copyright ownership, it's a necessary prerequisite to a
13 copyright claim.

14 As Your Honor knows, those claims were the focus of this
11:03AM 15 case. And I was ready to refer Your Honor to the unbridgeable
16 quote from the Bob Marley case. I see it made it into the
17 tentative, because that is really what they are trying to do.

18 They asserted a claim, we asserted a copyright claim.

19 As Your Honor knows, our copyright claim was not the focus
11:03AM 20 of this case or the trial.

21 The trial didn't turn on whether and how they were using
22 these works in the U.S.

23 Their licensee in the U.S. didn't even testify at the
24 trial, which shows the issues were about ownership. That is
11:03AM 25 what case was about, who had the rights.

1 All of the authorities that we cited, many of which made
2 their way into your tentative, support us on this point. They
3 have not cited anything to the contrary.

4 I don't know that further briefing would be helpful at
5 all.

6 So there is no reason to delineate between what happened
7 before summary judgment and what happened afterwards.

8 This case was about copyright ownership. It was about
9 infringement going both ways, and the law is clear that the
10 Section 505 applies to all of that.

11:04AM

11 Section 412 is a limited exception to Section 505 for
12 claims when a plaintiff is raising an infringement claim based
13 on a work that was not timely registered in advance of the
14 claim.

11:04AM

15 That is it, though, it has no bearing on these declaratory
16 relief claims or ownership claims.

17 It's rare to find a case that is as on point as -- I will
18 refer it to by name as the *Zamoyski* case. That is exactly what
19 happened here where they asserted an infringement claim; it was
20 dismissed on summary judgment; the counterclaim for ownership
21 proceeded to trial.

11:04AM

22 We actually have a stronger basis for fees in our case
23 than in that case, because here, not only was it our
24 counterclaim for ownership dec relief that went to trial, it
25 was also their affirmative claim for dec relief of copyright

11:04AM

1 ownership. And, that wasn't at issue in *Zamoyski*.

2 I think the law is clear and the tentative got it correct.

3 You know, Mr. Chibib referenced frivolity and objective
4 unreasonableness. I think the order is sufficient.

11:05AM

5 Frivolity, as Your Honor recognized in *Perfect Ten* is
6 required to be shown.

7 I think there is a very strong argument that the
8 fundamental basis of this case, and really the reason why we're
9 all here today, was a frivolous position.

11:05AM

10 It was an interpretation of a Japanese contract by a
11 Japanese company that was entirely inconsistent with multiple
12 judgments from Japanese Courts.

13 And Your Honor decided whether those judgments were
14 preclusive, and maybe that was a trickier legal issue. Your
15 Honor also looked at the language of the document itself.

11:05AM

16 They had an opportunity to argue what it means. They had
17 an expert in Japanese law, whose opinions Your Honor found were
18 untethered to legal authority, that was about the best they
19 could do.

11:05AM

20 Really, Mr. Chibib didn't mention much about Mr. Perasit's
21 testimony at trial.

22 We asked him what his position was about the meaning of
23 the contract, and he was quite clear that he didn't even
24 believe it to mean what UM Corporation had said it meant years
25 earlier in its inflammatory complaint and cease and desist

11:06AM

1 letter.

2 I could talk about the issue about the sidebar, but it
3 sounds like Your Honor knows that the issue is whether
4 Mr. Perasit had an obligation to testify truthfully. Let's
11:06AM 5 presume that he did.

6 His testimony was that he didn't agree with the position
7 that his company had advanced for years.

8 I think that very strongly meets any definition of
9 frivolousness.

11:06AM 10 The question about GMG and TIGA just because that is where
11 Mr. Chibib started, it's really a non issue. We're entitled to
12 all of these fees from UM Corporation as well.

13 We would have taken discovery from GMG and TIGA, they were
14 licensees, they had relevant information.

11:06AM 15 And also we asserted our declaratory relief counterclaim
16 against those entities as well because they were asserting
17 ownership and rights and copyrights, so for the same reason
18 that we get fees for declaratory relief against UMC, it would
19 apply against GMG as TIGA as well.

11:07AM 20 THE COURT: Thank you, Mr. Posner.

21 Mr. Chibib, let me give you one last opportunity to be
22 heard.

23 I come back to -- wasn't this case really about -- I mean,
24 do you disagree this case was about the ownership of these
11:07AM 25 rights?

1 MR. CHIBIB: Well, I think it was about what rights
2 were granted under the agreement, yes.

3 So, I'm not trying to mince words. It was -- specifically
4 it was a contract interpretation and what rights were granted
11:07AM 5 under that; ultimately those relate back to a copyright.

6 To address a few things that Mr. Posner raised.

7 THE COURT: Yes.

8 MR. CHIBIB: First, TIGA and GMG made no assertions,
9 no claims in this case.

11:07AM 10 So for him to say that they are asserting ownership by way
11 of a license is not true; they didn't file a claim in this
12 case.

13 Also, as it relates to whether or not TPC would have
14 obtained fees for these counter-defendants irrespective of
11:07AM 15 whether they were parties in the case, that is not necessarily
16 true.

17 While GMG is located here in the Los Angeles area, TIGA is
18 located in Thailand. They are outside of the subpoena power.
19 They would have very unlikely been able to take any deposition
11:08AM 20 of them or any discovery of them.

21 So the notion that it would have been the same whether
22 they are parties or not, is absolutely not true.

23 I will address the *Zamoyski* case. Mr. Posner said that
24 was maybe the most on point case he has ever seen.

11:08AM 25 I'm not sure that is the case there.

1 Zamoyski had only a claim of ownership. There was no
2 claim for infringement in that case, so Section 412 doesn't
3 apply when there is not a claim for infringement.

4 You couldn't have excluded fees from *Zamoyski*, because
11:08AM 5 they never asserted infringement in the first place, so 412
6 never applied.

7 In our case, there was a claim for infringement that was
8 ruled upon in the MSJ, and therefore, it's totally
9 distinguishable from *Zamoyski*.

11:08AM 10 Then, one very, very minor point, the 412 issue, Your
11 Honor, we raised in our opposition, so we didn't have a chance
12 to respond to what came up in the reply.

13 THE COURT: I mean, I ask -- I will ask this
14 question: What do you really think -- what would you gain by
11:09AM 15 further briefing?

16 I mean, you have got excellent lawyers on both sides.

17 I mean, you have briefed this fully, at least from the
18 Court's perspective.

19 What more is there that you would gain by having -- you
11:09AM 20 file something, then, of course, Quinn is going to feel like we
21 have to file something back. Do you just want another trip to
22 Los Angeles to have a hearing on this? What do we really gain
23 from that?

24 MR. CHIBIB: Well, Your Honor, I mean, I think you
11:09AM 25 said it, and, you know, this also came out in the *Jardeni*

1 declaration and other things.

2 I think this was a well-litigated case. Maybe it's
3 rose-colored glasses on my part, but I feel like we took
4 reasonable positions all along the way.

11:09AM

5 THE COURT: I'm sorry, I'm going to interrupt you.
6 And I'm going to review this again. I have read this time and
7 time again, so obviously, there is some things that have struck
8 a nerve as it relates to the frivolity and reasonableness.

11:10AM

9 I don't want you to leave this courtroom thinking that I
10 think you guys were just a bunch of hacks that just came here
11 to waste this Court's time.

12 That is not the issue at all.

11:10AM

13 So to the extent that provides any comfort -- I don't know
14 if it does -- I just don't want you to leave thinking -- look,
15 this was a hotly-contested case. There were genuine issues.

11:10AM

16 I think, you know, I had my own thoughts of sort of where
17 they lie. I think you guys were in a very difficult position,
18 when you don't have the -- the guy is running, I shouldn't say
19 "running" he's not available. That makes it very difficult,
20 and I think some might say you had a tough row to hoe from the
21 onset.

11:11AM

22 But I don't want you to think that this Court believes,
23 again, that this was just some, you know, fly-by-night, just
24 throw it up and see what happens. With that, go ahead and
25 continue.

1 MR. CHIBIB: The only point I was going to make is
2 the size of the award, I think is important for us to maybe get
3 one more word in, right?

4 If this were a 4,000 fee or award, I wouldn't be up here
11:11AM 5 asking for more briefing, but it's \$4.1 million.

6 THE COURT: All right. We are having some technical
7 difficulties here. And she rightfully deserves a break.

8 (Brief pause in the proceedings.)

9 Okay, we're ready to go. Go ahead.

11:11AM 10 MR. CHIBIB: That is really it, Your Honor.

11 I'm talking about a very limited scope in distinguishing
12 and responding to cases that were first raised in the reply
13 brief, not any more largess than that, I guess.

14 THE COURT: I will think about it. Let me think
11:12AM 15 about it over the weekend. I just don't see the need -- you
16 have laid out your points as always exceptionally well. And to
17 go through another briefing cycle, I just don't know -- quite
18 frankly, I would rather spend my time reviewing this order in
19 light of your comments and saying, okay, is there something I
11:12AM 20 missed here.

21 I think you have sufficiently laid that out, so I'm not
22 inclined, but in deference to you, let me think about it. If I
23 want more briefing, I will issue a minute order making that
24 request, all right?

11:12AM 25 MR. CHIBIB: Thank you, Your Honor.

1 THE COURT: If there is nothing further, which I
2 assume there isn't from Mr. Posner.

3 MR. POSNER: I wanted to say the *Zamoyski* case does
4 indeed have a copy infringement claim in it as you will find --

5 THE COURT: I'm going to be looking at all of this,
6 so --

7 MR. POSNER: I am also willing to stipulate they
8 were very worthy adversaries, but that is not a factor that is
9 relevant to whether fees are appropriate.

11:12AM 10 THE COURT: I am sure Mr. Chibib and Mr. Wexler
11 could care less whether you think they were worthy adversaries.
12 But I am joking when I am saying that.

13 So, I'm going to take this matter under submission.

14 Mr. Wexler, do you want to say something?

11:13AM 15 MR. WEXLER: Yes, Your Honor, I want to, but I
16 won't.

17 THE COURT: Okay. We should mark that for the
18 record in light of our history in this case.

19 All right. I'm going to take this matter under submission
11:13AM 20 until the Court issues its final order.

21 It is not likely -- I'm just going to be honest, just
22 giving the nature of the litigation and give my respect for
23 both sides -- I want to take a closer look at this. I may not
24 issue a ruling on this matter until at least -- it may not be
11:13AM 25 until the 30th of this month.

1 So it might be the end of the month before I issue a final
2 ruling.

3 I just want to take a look at some of the things in light
4 of the comments today, so the matter will remain under
5 submission until the Court issues its final ruling.

11:13AM

6 Thank you all. Have a good weekend.

7 (Proceedings were concluded at 11:13 p.m.)

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CERTIFICATE OF OFFICIAL REPORTER

COUNTY OF LOS ANGELES)
)
STATE OF CALIFORNIA)

I, TERRI A. HOURIGAN, Federal Official Realtime Court Reporter, in and for the United States District Court for the Central District of California, do hereby certify that pursuant to Section 753, Title 28, United States Code that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the judicial conference of the United States.

Date: July 31, 2018

/s/ TERRI A. HOURIGAN

TERRI A. HOURIGAN, CSR NO. 3838, CRR
Federal Official Court Reporter

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